

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

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S.B. Cr. Revision Petition No.426/1996
Kushal Das Vs. State of Rajasthan

Date of order: 11.12.2014

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. MK Garg, for the petitioner.
Mr. LR Upadhyay, PP.

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The instant revision petition has been filed by the petitioner Kushal Das S/o Kasu Ram, resident of Dhanoor Tehsil Sri Karanpur, District Sri Ganganagar under Section 397 read with Section 401 Cr.P.C. against the judgment dated 9.10.1996 passed by the Addl. Sessions Judge NO.1, Sri Ganganagar camp at Sri Karanpur in Cr. Appeal No.63/92 whereby the learned trial court dismissed the appeal of the petitioner and upheld the judgment dated 20.11.1992 passed by the Chief Judicial Magistrate, Sri Ganganagar in Cr. Case No.458/86 whereby the petitioner was convicted for offence under Section 25 of the Arms Act and sentence was passed for 3 years SI.

Brief facts of the case are that an FIR was registered against the petitioner on 24.8.1986 by the SHO Ramphal Sharma Police Station Keshrisinghpur in which it was alleged that he alongwith patrolling party went for regular search and at about 7.30 p.m. near bus stand of 8V Near Keshrisinghpur when patrolling party reached there, they saw one person who was

coming from opposite side and when he saw the police party he ran away from the place. Thus, a doubt was created, therefore, accused was stopped and upon search one 32 bore pistol was recovered from him for which there was no license found in favour of the petitioner. The petitioner was arrested and after investigation challan was filed, but ultimately petitioner was convicted for holding 32 bore pistol in his possession without license, which is punishable under Section 25 of the Arms Act and the learned trial court passed the sentence against the petitioner for 3 years SI vide judgment dated 20.11.1992.

In appeal filed by the petitioner the appellate court maintained the conviction as well as punishment against which this revision petition has been filed.

At the threshold the learned counsel for the petitioner vehemently argued that incident took place in the year 1992 and near about 22 years have passed, therefore, the petitioner is not challenging the finding of conviction arrived at by both the courts below but prayed that he may be granted benefit under Section 360 of Cr.P.C. and benefit under Section 6 of the Probation of Offenders Act and sentence awarded by the learned trial court and affirmed in appeal may kindly be quashed.

It is also submitted that there is no evidence on record to prove the fact that previously the petitioner was convicted and faced any trial, therefore, the petitioner may be granted benefit of aforesaid sections.

The learned counsel for the petitioner invited my attention towards judgment of this court reported in 1995 Cr.L.R. (Raj.)

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situation the benefit of probation was granted.

Per contra, the learned Public Prosecutor vehemently opposed the prayer and submits that petitioner is not entitled for any benefit because he has committed an offence under Section 25 of the Arms Act, which is serious in nature.

After hearing the learned counsel for the parties I have given my thoughtful consideration towards the rival submission. In my opinion, when offence was committed in the year 1992 then in the year 2014 it is not proper to send the petitioner behind the bars. In case of Darshan Singh (supar), the following adjudication was made by the coordinate bench of this court, which reads as under:-

"6. I have given my thoughtful consideration to the rival contentions. The Arms Act, 1959 does not exclude the application of provisions of Sec. 360, Cr.P.C. as well as those of provisions under Probation of Offenders Act, 1959. In *Jugta Ram Vs. State of Rajasthan, 1981 Raj. Cr. Cases 01*, it has been held that unless any Act excludes the applicability of Sec. 360 Cr.P.C. or the provisions of Probation of Offenders Act, the mere fact that a minimum sentence has been prescribed for any offence, is not sufficient to refuse beneficiary probation. It was further observed that its application, however, depends on the facts of each case as to whether such benefit should be extended to the accused or not. This is trite law that mere prescribing of minimum sentence for a particular offence does not create any bar for extending the benefit of probation either under Sec. 360, Cr.P.C. or under the Probation of Offenders Act in a particular case. A similar view has been taken in *Pidar Singh vs. State of Rajasthan, 1992 Cr.L.R. 329*.

7. Now advertig to the facts of the instant case, there is nothing on record to show that the petitioner was a previous convict or that his conduct or character was not good. The alleged incident took place on 15.9.82. Since then, the petitioner has undergone mental agony and incurred financial strain during the trial as also during appeal. He has already been under

detention for a period of about 1-1/2 months. Therefore, having regard to the age, character and antecedents of the petitioner as also the nature of offence committed by him, I feel that it is a fit case wherein the petitioner should be released on probation of good conduct."

Upon perusal of above adjudication it is clear that in that case incident took place on 15.8.1982 and benefit of probation was granted in the year 1995 and here in this case, the incident took place in the year 1992 and this revision petition is listed in the court for hearing in the year 2014, therefore, in my opinion, the petitioner is entitled for the same relief.

Accordingly, this revision petition is partly allowed and while maintaining the conviction of the petitioner recorded by the learned trial court, it is directed that instead of sentencing him at once to any punishment , he be released on probation of good conduct, on his entering into personal bond in the sum of Rs.5,000/- with one sound and solvent security in the like amount, to the satisfaction of the learned trial court, to appear and receive the sentence when called upon during a period of two years from today and, in the meantime to keep peace and be of good behavior. He shall also give an undertaking that during the said period, he shall not commit any offence punishable under the Arms Act. The petitioner shall furnish personal bond and one surety within one month from the date of receiving copy of this order. The seized 32 bore pistol stands confiscated to the State Government.

(GOPAL KRISHAN VYAS),J.